

STRATEGY RESEARCH PROJECT

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TOWARDS A COMPREHENSIVE, JUST AND LASTING PEACE IN THE MIDDLE EAST

BY

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ABSTRACT

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The Oslo Accords between the Palestinians and Israelis of 1993 marked a watershed in the annals of the Arab-Israeli conflict. The claims of competing nationalisms over the same territory which lay at the heart of the conflict gave way to afresh and welcome pattern of accommodation. By recognizing each other and accepting to a degree the right to exist on national territories, a way was opened for a radical transformation in the conduct of regional affairs.

Jordan and Israel concluded a Treaty of Peace in 1994. Although this was a momentous achievement reversing the history of violence in the region, it must be viewed within the overall context of the quest for a comprehensive, just and lasting peace for the entire region. The obstacles to peace that are, and have been experienced along the way must be viewed within the same context. There have always been setbacks. But for Israelis and the Arabs alike, there is no viable alternative, the peace process must go on. Peace building must be stepped up. Unfortunately the quest for peace appears to be faltering. The peace process in the Middle East is in deep crisis which seems to manifest no respite. Recent events have brought the process to a grinding halt.

To understand the barriers to peace in the region, this paper examines the Palestinian issue including refugees and Jerusalem, examines the history and different aspects of the issue, and develops a set of scenarios that could lead to a just and lasting peace throughout the entire region.

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TOWARDS A COMPREHENSIVE, JUST AND LASTING PEACE IN THE MIDDLE EAST

The Arab Israeli conflict has shackled the people of the Middle East region, blurred their vision, and blunted their creative drive for almost the whole of the twentieth century. The region has experienced a major war every decade since 1948. These wars have prevented the region from developing into a normal, vibrant community, stunting economic and political growth and sapping the region's resources. Conflict has permeated into every aspect of lives on every side in the region and dominates the intellectual pursuits and policies of the population. The resulting divisions of fear and suspicion led both sides to develop walls of mistrust culminating into a fortress mentality where to all, a state of siege prevails.

Both Arabs and Israelis alike have repeatedly stated they sought nothing more than to live in peace, but this peace was a mutually exclusive. Both sides maintain that the only objective is security, but it is a peculiar notion of security that stems from guarded mutual interests and the politics of reconciliation, but it is a notion totally dependent on power and dominance. The only satisfactory assurance this path provided was the stockpiling of ever greater arsenals of lethal weaponry. Power and dominance did not resolve the problem. Other means had to be followed.

The people of the Middle East experienced a major breakthrough at the end of the last century. It appeared they began to chart for themselves a new course, a direction for peace and reconciliation as both sides embarked on the current peace process, which was launched in Madrid at the beginning of last decade, and marked a new phase in the region's history. The 1993 Oslo Accords between the Palestinians and Israelis marked a watershed in the annals of the Arab-Israeli conflict. The competing nationalistic claims over the same territory which lay at the heart of the conflict gave way to a fresh and welcome pattern of accommodation. By recognizing each other and a mutual right to exist on sovereign national territory, there opened a way for a radical transformation in the conduct of regional affairs.

Hardly a country or a people have endured the politics of tribulation engendered by the politics of the Palestine question as have Jordan and the Jordanian people. In many ways, Jordanians have been compelled by facts of geography and geopolitics to participate in conflicts they did not cause. Jordan has been obliged to host three major waves of refugees from wars in the region in 1948, 1967 and 1991. Any comprehensive, long term solution must address the legal, political and humanitarian aspects of the refugee problem. Moreover, terms such as 'refugee' and 'right of return' have become politically sensitive, even politically incorrect. But the issue is too important to fall victim to political maneuvering. The human dimension must be addressed in any lasting settlement to the region and must take note of the fact that the issue of

refugees is an overarching issue concerning Jordan, Egypt, Syria, Lebanon, the Palestinian Authority and Israel.

In addition to refugees, the religious and spiritual significance of Jerusalem to the three holy religions; Islam, Christianity and Judaism must be considered in any settlement.

JERUSALEM IN THE FINAL STATUS NEGOTIATIONS

STATUS OF JERUSALEM

During the mandate system established in the aftermath of World War I, and, In accordance with the principles of the Balfour Declaration and Article 22 of the League Covenant, the League of Nations drew up the Mandate for Palestine, tailor made by the British. The document underwent several transformations. Arab pressure and riots in Palestine brought about the Churchill White Paper of 1922, which again reiterated the right of the Jews to a Homeland in Palestine, and the establishment of Jordan as an independent state. So arrangements between the League of Nations and Great Britain contained specific provisions relating to holy sites in Palestine, the majority of which were located in Jerusalem. These provisions provided guarantees for free access to the holy sites, freedom of worship, preserving existing rights and the responsibility for maintaining public order.¹

The unique status of Jerusalem and the vital importance of the issue of the holy sites were reflected in United Nations General Assembly Resolution (UNGA) 181 in 1947, otherwise known as the partition resolution. It called for a special status for Jerusalem as a distinct entity separate from the proposed Arab and Jewish state. It stated that the city of Jerusalem shall be established as a corpus separatum under a special international regime and shall be administered by the United Nations (UN).²

Subsequent resolutions to the UN reinforced these ideas (Resolution 185 on 26 April 1948, and Resolution 187 of 6 May 1948). "Resolution 194 of 11 December 1948, specified that in view of its association with three world religions, the present Jerusalem area, including the present municipality of Jerusalem, plus the surrounding villages and towns, the most eastern of which shall be Abu Dis, the most southern, Bethlehem, the most western, Ein Karem, and the most northern, Shu'fat, should be accorded special and separate treatment from the rest of Palestine and should be placed under effective United Nations control." On December 9, 1949, a UNGA Resolution spoke of placing Jerusalem under a "permanent international regime."

STATUS OF ISRAEL IN JERUSALEM

On May 15, 1948 the provisional government of Israel sent a cable to the U.N seeking recognition based on the Partition Resolution as the legal basis for establishment of a state. Implicit was Israeli acceptance, theoretically, of the status of Jerusalem as a corpus separatum, thus legally obligating Israel to observe the provisions of the Resolution relating to Jerusalem.

Israel argues today that the resolution did not have a legislative character. However, the legal principle of estoppels forbids the invocation of a legal instrument or behavior to acquire a benefit and to reject that same instrument of behavior to avert an obligation.

Another Israeli argument advanced to justify the legality of occupation was based on the grounds of legitimate self-defense. However, the measures adopted by Israel were not of a temporary character consistent with the right of a self defense. On the contrary, Israel declared Jerusalem as its eternal, undivided capital, and moved many ministries to it. Massive Jewish settlement was encouraged and repeated statements emphasized that Jerusalem was an integral part of Israel.

As a result of the 1967 war, Israel occupied Jordanian controlled Jerusalem. By 29 June 1967, Israel law and administration was applied to an enlarged Jerusalem,³ including the old city, Kalandia Airport, Sheikh Jarrah, Sur Baher, and other neighboring areas previously under Jordanian control.

The international community responded by adopting a number of resolutions in the UNGA and Security Council, including UNGA Resolutions 2253, 2254 and UNSC Resolution 242. On 4 July 1967, the General Assembly adopted UNGA Resolutions 2253 which was a Pakistani draft on the situation in Jerusalem. The Resolution was adopted by a vote of 99 in favor, none against, 20 abstentions and 3 absent. This resolution stated: The General Assembly Deeply concerned at the situation prevailing in Jerusalem as a result of the measures taken by Israel to change the status of the city; considers that these measures are invalid; and calls upon Israel to rescind all measures already taken and to desist forthwith from taking action which would alter the status of Jerusalem; requests the Secretary-General to report to the General Assembly and the Security Council on the situation and on the implementation of the present resolution not later than one week from its adoption.⁴ On July 14, 1967 The General Assembly adopted UNGA Resolutions 2254, which stated: The General Assembly recalling its resolution 2253 of 4 July 1967, having received the report submitted by the Secretary-General, taking note with the deepest regret and concern of the non-compliance by Israel with resolution 2253, deplores the failure of Israel to implement General Assembly resolution 2253, reiterates its call to Israel in that resolution to rescind all measures already taken and to desist forthwith from taking any

action which would alter the status of Jerusalem; requests the Secretary-General to report to the Security Council and the General Assembly on the situation and on the implementation of the present resolution.⁵

Following the June '67, Six-Day War, the situation in the Middle East was discussed by the UN General Assembly, which referred the issue to the Security Council. After lengthy discussion, a final draft for a Security Council resolution was presented by the British Ambassador, Lord Caradon, on November 22, 1967. This resolution, numbered 242, established provisions and principles which, it was hoped, would lead to a solution of the conflict. Resolution 242 was to become the cornerstone of Middle East diplomatic efforts in the coming decades. The resolution reads: The Security Council, Expressing its continuing concern with the grave situation in the Middle East, emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every state in the area can live in security, emphasizing further that all member states in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter. Affirms that the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles: Withdrawal of Israeli armed forces from territories occupied in the recent conflict; termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force.⁶

On 21 May 1968, U.N.S.C. Resolution 252 reaffirmed the inadmissibility of the acquisition of territory by force and further stated that "all legislative and administrative measures taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem, are invalid, and cannot change the status."⁷

STATUS OF JORDAN IN JERUSALEM

Regarding Jordan's legal position during the period 1948-1950, it can be argued that at least technically Jordan's status could be considered as that of belligerent occupier. However, from 1950 on this does not seem to be the case following the unity of the East and west Bank of the Jordan River.

Since the end of Ottoman rule, sovereignty of the region was not transferred to any other power. Accordingly, neither the League of Nations nor Great Britain possessed sovereignty of the territory of Palestine or what was to become the state of Israel.

True sovereignty was in abeyance and rested with the people of Palestine. The view was expressed by Lord McNair in 1950 that "sovereignty over a mandated territory is in abeyance, if and when the inhabitants of the territory obtain recognition as an independent state, sovereignty will revive and rest in the new state."

In 1950 the Palestinians decided to ask for unity with Jordan, thereby exercising partially their right of self-determination. From that point on, Jordan became the lawful sovereign over the West Bank and East Jerusalem. Although there was no explicit recognition, the argument could be made that implicit recognition existed when Jordan joined the UN in 1955, and not a single UN member expressed reservations about Jordan's status in the West Bank and Jerusalem.

Jordan therefore played the role of guardian of the holy sites in Jerusalem beginning in 1950, these were administered by the Jordanian Ministry of Awqaf, and large amounts of money were spent on maintaining and improving the holy sites. In addition, Jordan assumed responsibility for Christian Holy Sites.

ISRAELI ANNEXATION OF JERUSALEM

On 31 July 1980, the Knesset enacted a basic law stating that the unified Jerusalem is the eternal, undivided capital of Israel. This was, in effect a formal legal annexation, from the Israel point of view, a process that began almost immediately following the 1967 war.

The U.N reacted by adopting U.N.S.C. Resolution 478 on 20 August 1980, which expressed deep concern over the enactment of a basic law in the Israeli Knesset proclaiming a change in the character and status of the Holy city of Jerusalem, a law with critical implications for peace and security. Furthermore, the Resolution determined that all legislative and administrative measures taken by Israel, the occupying power, which have altered or purport to alter the character and status of the holy city of Jerusalem, and in particular, the recent basic law of Jerusalem, are null and void and must be rescinded forthwith.

POSSIBLE SOLUTION

Israel has been adamant about political sovereignty in unified Jerusalem, which makes possible solutions hard to reach and continues to escalate the violence between the Palestinians and Jews over Jerusalem. But Let us consider below three scenarios for a possible solution on Jerusalem:

1. Division of sovereignty.

This proposal would envision the return of Arab East Jerusalem to Arab rule. From the Arab point of view, this is the preferred solution. However, in Israel it is anathema to both major

political parties and to public opinion in general as it would be perceived as an unacceptable concession by Israel, contradicting long term aspiration (Jerusalem, in the Jewish tradition is both a political and spiritual capitol) as well as Israeli policy since 1967. In the highly unlikely event that an Israeli government was willing to divide Jerusalem or relinquish sovereignty, it would rapidly lose its legitimacy in the eyes of Jewish public opinion, both in Israel and abroad.

2. Municipal Autonomy or separation.

This proposal is based on giving the Palestinians increased municipal autonomy such as the control of zoning and housing permits. Although it circumvents the issue of Palestinian sovereignty, it would probably be acceptable to them as part of a long term strategy. The Israeli fear is that Palestinians might adopt a strategy to slowly convert such a solution into territorial one; i.e. the possibility that municipal autonomy could evolve into permanent separation and in effect legitimize Palestinian sovereignty. Israel views this as creeping annexation where municipal separation of Jerusalem is seen as a first step towards asserting separate sovereignty, as well as bearing the seeds of a future conflict.

3. Administration or religious solution.

This solution entails administrative arrangements without sharing state sovereignty regarding the Holy sites, and at the same time returning the Arab East Jerusalem to Palestinian control. Although this is not the preferred solution for Israel, it should be seriously considered since it may be the only practicable, workable solution.

RECOMMENDATIONS

Taking into considerations the extreme sensitivity of the Jerusalem issue to all parties involved, and at the same time reaching a solution which has the best chance to last in the future, a solution which has a combination of proposals 1 and 3 would lead to a just and lasting peace in the region. In this solution there will be a divided Jerusalem (East Jerusalem under the Palestinian sovereignty and west Jerusalem under the Israeli sovereignty) and at the same time there will be an administrative (Religious) arrangement regarding the Holy Sites. This compromise affords the parties a way to preserve lasting peace between the Palestinians and Israel, offering both a portion of their desires; otherwise the Palestinians will continue struggling until they gain what they believe are their rights in Jerusalem, without which means that there will be no lasting peace.

THE PALASTINIAN REFUGEES

CREATION OF THE PROBLEM

The Palestinian refugees' problem first came into existence following United Nations (UN) resolution 181 on 29 November 1947, which established Israel as a state and envisaged the division of Palestine between Arabs and Jews into two separate partitions. This partition plan was accepted by the Zionist leadership and rejected by the Arabs, who considered the plan unfair because it provided for the recognition of Jewish seizure of Arab territory. Violence broke out and the result was Jewish control over land allocated to the Arabs according to the original partition plan. On the 14th of May 1948, the last day of the era of the British Mandate, the Jews declared existence of their sovereign state, and localized conflict between Arabs and Jews spread to include Arab and foreign intervention. A new phase in the conflict in Palestine began, the result of which was the expulsion of three quarters of a million Palestinians to other parts of Palestine and neighboring Arab countries.

The United Nations attempted to mediate in the dispute by appointing Count Bernadotte⁸ as international mediator. His report to the United Nations on 18 September 1948 recommended that solving the humanitarian problem of the Palestinian refugees must focus on finding a political solution based on the necessity of accepting the refugees' right of return to their homes at the earliest possible time with the international community asked to provide the necessary assistance for this solution.

On the 19th of November 1948, UN resolution 212 was passed which called for establishing a special fund for Palestinian refugees as recommended by the special envoy's report in order to alleviate cases of hunger and frustration amongst the Refugees and help UN to establish peace.⁹

On 11th December 1948, UN Resolution 194 was passed which called for allowing the refugees who desire to do so to return to their homes and to live in peace with their neighbors at the earliest possible time. Those who did not wish to return could claim compensation. This resolution was rejected by Israel.¹⁰ It also established the Conciliation Commission of Palestine (CCP) aimed at reaching a solution for the Arab-Israeli conflict.¹¹ The Commission efforts concentrated on conciliation and mediation between the parties on all outstanding questions including the preparation of detailed proposals for a permanent international regime for Jerusalem and the Holy Places, facilitating the repatriation, economic and social rehabilitation of refugees and the payment of compensations. The CCP headquarters were to be in Jerusalem, and its members included France, Turkey, and the United States.

In terms of repatriation, the CCP started collecting information, including the number of refugees and their preferred option for a durable solution, it also attempted to facilitate the return of refugees on a case-by-case basis, and a small number were allowed to return under family reunification. But the commission failed to advance any serious efforts on repatriation considering that the issue is a political one and due to difficulties pertaining to changes on the ground. Eventually, the CCP has become a functionary one consisting of filing annual reports, which are submitted, to the General Assembly. These reports have referred to in Resolution 194. However, reference to the said resolution stopped after the signing of the Oslo Agreement in 1993.¹²

It should be mentioned that UN Resolution 273 on 11 May 1949 which accepted Israel as a member of the United Nations referred to UN resolutions 181 and 194 and that Israel must work to implement those resolutions; thus a linkage was established between Israel's membership and the implementation of the resolutions.¹³

The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was established by United Nations General Assembly Resolution 302 (IV) of 8 December 1949 to carry out direct relief and works programs for Palestine refugees. The agency was operational on May 1, 1950.¹⁴ Since its establishment, the agency has been delivering its services to Palestinians in Jordan, Syria, Lebanon and the Gaza Strip. UNRWA is unique in terms of its longstanding commitment to one group of refugees and its contributions to the welfare and human development of four generations of Palestine refugees. Originally envisaged as a temporary organization, the agency has gradually adjusted its programs to meet the changing needs of the refugees. Today, UNRWA is the main provider of basic services, education, health, relief and social services, to over 3.7 million registered Palestine refugees in the Middle East of which 42% are in Jordan.¹⁵

Palestinian refugees view the agency as a tangible expression of the international community's support for their plight. The agency's basic services have alleviated the suffering and helped refugees in participating in the local economy and lift themselves out of the cycle of poverty. The agency, nevertheless, continues to face a critical financial situation due to years of under-funding. Contributions have remained steady but have ignored the needs of the growing refugee population. Furthermore the agency is limited by charter and cannot expand its services. Spending has decreased from 200 USD per refugee in the 1970's to 70 USD per refugee today. The ability of UNRWA to deliver in the future will depend on the amount of financial and political support it receives.¹⁶

To some, UNRWA's financial difficulties are considered to be an intentional plot by the international community "to wind down the agency in advance of a comprehensive peace settlement".¹⁷ UNRWA's continuing existence represents a symbol for Palestinians that reaffirms the international responsibility towards them and the continued commitment of the United Nations resolutions, which call for the right of return.

On June 1967, Israel invaded some of its' neighboring Arab countries, the resulting Arab defeat permitted Israel to spread its hegemony on all the land of Palestine and lands of other Arab countries to include to the west bank of Jordan, Sinai of Egypt and the Golan Heights of Syria. As a result a new wave of Palestinian refugees was forced to leave Palestine and most of them left to Jordan.

As a result of the 1967 war UN Resolution 237 on June 1967, called for facilitating the return of the displaced¹⁸, and was followed by Resolution 242 on November 1967 calling for the achievement of a just solution to the refugee problem.

DEFINITION OF A REFUGEE

The general definition of a refugee is a person living outside his homeland and who is not allowed to return.

The United Nation Relief and Works Agency (UNRWA) defined a Refugee as a person normally resident in Palestine for minimum of two years prior to the eruption of the 1948 Arab-Israeli dispute and who has lost his home and livelihood as a result of the hostilities.¹⁹

According to this definition, Palestinians residing outside Palestine in 1946 are excluded, as well as those outside UNRWA's area of operations. The definition states that a refugee should have lost both home and livelihood. Thus, large numbers of Palestinians were not classified as refugees.

THE DIFFICULTY IN SOLVING THE REFUGEE PROBLEM

This is considered one of the most difficult problems to resolve despite its being one of the most important issues between the Palestinians and Israel because it deals with the emotions of people and their lives. Because of this, the problem was relegated to the final status negotiations; the parties concerned did not want it to be resolved amongst the issues mentioned in the Oslo Accord.

The problem of finding a solution is compounded by the many links to other issues; the problem is not merely a direct conflict between two parties. Host countries, which have differing national and political interests, have different opinions regarding a solution since each country will be affected in a unique way from the solution chosen. There are Islamic countries who

consider themselves party to the conflict with Israel (though indirectly) due to the broader ramifications of the Palestinian cause and who do not hide their views on dealing with Israel. Thus Islamic and non-Islamic states envisage differing scenarios for the future of the Palestinian problem including the resolution of the refugee problem.

The Israeli view is that the refugee problem is not a political one but rather a humanitarian problem. Israel does not accept responsibility for the refugees' plight and claims that the Arabs were responsible for the problem. Israel, moreover, links (or tries to trade off) the refugee problem to the issue of Jewish immigrants from Arab countries. The following table shows the registered numbers of refugees and their places of residence in the host countries according to UNRWA statistics. Around 56% of the Palestine refugees are under 25 years of age indicating a youth bulge.

| AGE GROUP | JORDAN | WEST BANK | GAZA STRIP | LEBANON | SYRIA | AGENCY WIDE | % OF TOTAL POPULATION |
|-----------|-----------|-----------|------------|---------|---------|-------------|-----------------------|
| < 6 | 192,727 | 58,542 | 145,191 | 35,599 | 49,814 | 481,873 | 13% |
| 6-15 | 350,333 | 140,027 | 230,778 | 77,677 | 83,130 | 881,945 | 24% |
| 16-25 | 312,672 | 110,185 | 145,975 | 67,659 | 72,365 | 708,856 | 19% |
| 26-35 | 259,446 | 86,591 | 103,285 | 63,390 | 59,824 | 572,536 | 15% |
| 36-45 | 152,402 | 62,471 | 70,105 | 47,860 | 44,386 | 377,224 | 10% |
| 46-55 | 108,156 | 46,499 | 52,074 | 30,149 | 26,742 | 263,620 | 7% |
| > 55 | 194,456 | 78,694 | 77,214 | 54,138 | 46,938 | 451,440 | 12% |
| TOTAL | 1,670,192 | 583,009 | 824,622 | 376,472 | 383,199 | 3,737,494 | 100% |

PALESTINIAN REFUGEES AND INTERNATIONAL LAW

UN Resolution 194 called for the return of the Palestinian Refugees to their homes. In order to deal with the refugee issue and as a result of the UN failure to implement the right of return (UN Resolution 194) UNRWA was founded on 28 December 1949 without prejudice to UN Resolution 194.²⁰

On 10 December 1948, the International Declaration for Human Rights was adopted. Article (13) paragraph 2 reads, "Every person has the right to free movement between countries and the right to return".²¹

On 14 December 1950 UN Resolution 428 established the High Commission for Refugees (UNHCR) with a political and humanitarian mandate to protect and assist the World's refugees under UN auspices and to administer the funds required.²²

In order to deal with the refugee problem in Europe resulting from World War II, the 1951 Convention relating to the status of refugees was adopted in which the rights of refugees in general were defined.

In 1967, Protocol I came to cover the shortcomings of the 1951 Convention and as an update. Following that, many UN General Assembly and Security Council resolutions were adopted reaffirming the need to solve the Palestinian refugee problem, most important of which are Resolutions 242 and 338. These two resolutions were the basis for the Madrid peace process launched in 1991.

It is noteworthy that Resolution 181 is now the most controversial resolution, when debating the establishment of a Palestinian State and the issue of refugees. This resolution, which was rejected by the Palestinians in the past, is now their reference to solving the Palestinian issue including the refugees' problem. The irony now is that Israel rejects a decision that was the basis for its establishment.

THE POSITION OF CONCERNED PARTIES

Palestinian Perspective

The Palestinian refugees have been subject to two violations: violation of the right to stay in their country when they were illegally expelled, and violation of their right to return.²³ An Israeli once wrote, "Every people in the world lives in a place, except the Palestinians. The place lives in them."²⁴ The right of return signifies the return to original homes and not to a newly proclaimed Palestinian state. Israel bears the responsibility for creating the problem and carries the responsibility for solving it. Such responsibility should be acknowledged.²⁵

The right of return is legal; it is long and well documented by UN Resolution 194. This resolution is the embodiment and restatement of international law that asserts the right of refugees to return and provides welfare to them until they do.

Despite the fact that UNGA resolutions are considered as recommendations from a technical point of view, their adoption in consecutive years during the past 50 years bestows upon them with political and legal authority and moral weight. They have become evidence of the international community's acknowledgment of the existence of the rights of the refugees and the need for the implementation of the resolution.²⁶ More importantly, they have reflected the consensus of the international community that the Palestinian refugees' problem shall be resolved in accordance with an agreed-upon solution incorporating repatriation and compensation.²⁷

The Refugee Convention and Protocol for 1951 defines the refugee as a person outside his country of nationality and is unable to obtain the protection of his country from fear of prosecution. However the convention has a separate provision that applies only to Palestinian

Refugees, "Article 1 D", and this convention shall not apply to persons who are at present receiving from organizations of the UN other than the UNHCR protection or assistance".²⁸

This was also emphasized in paragraph 7 of the UNHCR statute. The significance of the latter mentioned articles lies in the distinction between protection, and assistance. These are dramatically different provisions in the refugee law. In the case of Palestinian refugees, UNRWA solely provides assistance to the refugees (food, water, clothing, and shelter). By far the Refugee Convention and the UNHCR establish a more comprehensive scheme of protection for refugees. It guarantees rights embodied in international conventions including representing refugees and intervening to protect them.²⁹

UNRWA's applicable refugee definition to the Palestinians is far narrower and different than the definition in the Refugee Convention. Although UNRWA was not authorized to serve in protecting the refugees, this was not because they did not deserve such protection, but because the situation was considered with such importance that a separate protection agency (the CCP) was established.³⁰

The drafting of the Refugee Convention was characterized by a world consensus due to the UN moral responsibility in creating the refugee situation. The urgent case of the Palestinian refugee was unique enough not to be contained under any existing refugee regime. It required a heightened protection regime. Therefore, a heightened protection regime requires that the Palestinian refugees receive at minimum the spectrum of protection rights of all refugees of the world.³¹

Moreover, Article I D, mentioned earlier, guaranteed that if for some reason or another UNRWA or the CCP would fail, the functions would be transferred to UNHCR and the Refugee Convention would immediately apply. Thus, the UNHCR shall be fully empowered to oversee and implement the appropriate conventions and resolutions relating to the rights and enforcement of solutions to the refugee problem.³²

In addition and at a minimum, all human rights and humanitarian law protections available for all the refugees are available to the Palestinians. Since refugee law principles applicable to all refugees apply on the Palestinian refugees, therefore each refugee shall have the voluntary choice in determining which of the three main durable solutions s/he wishes to exercise: (1) voluntary repatriation, (2) voluntary host country absorption, or (3) voluntary 3rd country resettlement. Moreover, refugee law principles include the right to claim restitution of property and/or compensations for the refugee conditions.³³

As for the issue of whether individual human rights can be protected in a case where they collide with collective rights, the Palestinian problem stands unique; where there has been no

other population deprived from nationality as well as access to its entire territory (former state), these refugees shall benefit from precedents established in other refugee situations where both individual and collective rights are involved.³⁴

The Israeli concern that the return of refugees would change the character of the Jewish State is an immoral and illegal claim in light of the Human Rights law. It is a dangerous illusion to think that peace would prevail without the implementation of the right of return, and it is also not realistic and is an injustice to ignore more than 5 million Palestinian people.

Israeli Perspective

Israel rejects the return of refugees to their homes in Israel and some extremists even reject the return to the West Bank stressing that it was not Israel that created the refugee's problem, but the Arabs. The war created a Jewish as well as a Palestinian refugee problem.³⁵ The refugee flight was a result of instigation by Arab leaders in a war against Israel and therefore ultimate responsibility for the claims (of refugees) must be borne by the aggressor states (the Arab States).³⁶

Moreover, Israel believes that the return of the Palestinian refugees creates an existential threat, whereby Israel seeks to maintain its existence, stability, and Jewish character. Israel dealt with its refugees and expects the Arabs to deal with theirs.³⁷

However, some Israelis appear to have different positions although they do not call for the right of return under Resolution 194; Israeli Prime Minister Ehud Barak at a Knesset statement expressed Israel's regret for what happened to the Palestinian due to the 1948 war.³⁸ However, this regret was not at all based on a feeling of guilt or responsibility for the emergence of the conflict and its results.³⁹

Some Israelis who are activists of peace consider that Israel will undertake an agreed upon number of refugees which can be absorbed psychologically, politically and economically. An arbitrary figure may be 50,000 refugees per year until further notice. The refugees may return to new housing projects in Arab communities (i.e. Haifa, Nazareth, and Jaffa.) or could be allowed to rebuild their houses where they once stood if this is possible. As for others, they could be resettled in the future state of Palestine, and the settlements in these areas could be turned over to refugees.⁴⁰

In terms of compensation, Resolution 194 (III) did not specifically designate Israel for specific compensation responsibility pointing out that many parties have assumed that the resolution infers that Israel is accountable for abandoned refugee property. However, Israel may not deny the right of the Palestinian refugees to a fair compensation but would like to mitigate

costs by linking this to the issue of Jewish compensations for their property in Arab States. Israel claims in response that UNRWA statistics and figures are grossly exaggerated.⁴¹

The most difficult task facing the calculation of compensations is the identification of the items to be compensated, (1) movable, and (2) immovable property. There are no precise figures on the value of the Arab absentee property but estimates range from 2-10 billion (US Dollars). According to the CCP, the total value of movable and immovable property is approximately 1.85 billion 1990 USD. These estimates were refused by the Arabs and Palestinians believing that they were too low. An Arab League Committee estimated refugee compensation at 35 billion USD including individual compensation and cost of infrastructure.⁴²

Moreover, a principle difference over compensations is whether payments should be global or individual and if global, should they be made directly to the refugees or to an agency representing the interests of refugees in the form of large-scale development projects intended to rehabilitate and absorb the refugees.⁴³

In terms of Jewish counter-claims, these incorporate war damage claims and claims for the frozen Jewish property in Iraq. In 1953 and 1956 moves by Syria and Egypt to freeze Jewish property or place it under a custodian increased the amount of Israeli counter claims at that time. The Jews estimate the value of their property in Arab States around 100 billion USD.⁴⁴

Contributions from Arab states are unlikely because they hold Israel liable for creating the problem. And only Gulf States could afford to participate. However contributions may be solicited through rehabilitation and/or resettlement projects in the anticipated Palestinian State or neighboring countries. International contribution is unlikely to be on individual basis. It shall be in the form of projects for refugee rehabilitation and economic assistance to the Palestinian State.⁴⁵

Some economists anticipated the dissolution of UNRWA and the transfer of its 300 million USD budget into projects set to rehabilitate the Palestinian refugees. Theoretically as US economic assistance to Israel decreases, funding for development projects in the Palestinian State would increase.⁴⁶

Individual claims, if considered, may have to be dealt with through a bilateral Palestinian-Israeli claims commission, such commission shall be established as one of the bodies set up in a peace treaty to deal with unresolved issues in the final status negotiations.⁴⁷

Jordanian Perspective

Jordan hosts the largest number of Palestinian Refugees, as there are 1.5 million registered Palestinian refugees in this country. This number constitutes 41.9% of the total

number of refugees.⁴⁸ Most of them have acquired Jordanian nationality as a result of the unification between Jordan and the West Bank in 1950. The Unity Declaration stated that the Union does not prejudice the future rights of Palestinians to their homelands. Moreover, this nationality does not mean that those refugees have assigned their rights of return and compensation since citizenship does not terminate refugee status as it would for other refugee groups covered by the UN Refugee Convention and Protocol.⁴⁹

Jordan has done its utmost in creating a stable environment for Palestinians. It has offered, unlike the other states hosting Palestinians within the UNRWA mandate, the same civil liberties and political freedoms, including the right to vote, that all Jordanians enjoy. Palestinian refugees have appeared the most secure economically and legally than any of the Palestinian refugees in the areas where UNRWA operates.

Jordan's role is to protect the rights of return and compensation to those refugees (and displaced persons) as well as Jordan's rights in compensation due to the expenses that the Jordanian government has borne. For the Palestinian right of return and compensation, Jordan has left the choice for refugees to determine their future. In this respect, the Late King Hussein reaffirmed on September 18, 1993 the following: "As for our brethren here, they are in their country and among their brothers and kinfolk. They have the same rights as we have and they have the same duties and responsibilities as we have until any of them decides on a different course or a new situation. Our position is crystal clear. Whoever opts to leave us and go to his original motherland, he is free to do so; whoever opts to stay here and to have all his rights, he is most welcome, and will stay with us as part and parcel of one nation."⁵⁰

In ensuring the refugees' right of return and compensation, Jordan insisted in its agreement with Israel on the following:

- In the Jordanian-Israeli Common Agenda of September 14, 1993, it was stated that the attainment of a just solution to the bilateral aspects of the issue of refugees would be in accordance with international law.
- Article 8 of the Jordanian-Israeli Peace Treaty states that: Recognizing that the above human problems (of refugees and displaced persons) caused by the conflict in the Middle East cannot be fully resolved on the bilateral level, the parties will seek to resolve them in appropriate forums, in accordance with international law, including the following:⁵¹
 - In the case of displaced persons in a quadripartite committee together with Egypt and the Palestinians.
 - In the case of refugees:

- In the framework of the multilateral working group of refugees;
- In negotiations, in a framework to be agreed, bilateral or otherwise, in conjunction with and at the same time as the permanent status negotiations pertaining to the territories (the West Bank and the Gaza Strip) referred to in Article 3 of this treaty.
- Through the implementation of agreed United Nations programs and other agreed international economic programs concerning refugees and displaced persons, including assistance to their settlement.

As for the country's right of compensation, it is well known that Jordan has contributed a major part of its annual budget to support programs for Palestinian refugees in ten camps. Jordan's contribution includes the rent of campsites, the provision of medical care, the cost of education of refugee students at governmental schools, and improvements in camps facilities.⁵² Jordan is also concerned regarding any possible future course for rehabilitation for those who choose not to go back. Jordan recognizes the important role of UNRWA in easing the suffering of the refugees and at the same time tries to strengthen its role and carry on its mission until a permanent solution to the refugee problem is reached and fully implemented, within the framework of a comprehensive and lasting peace

THE REFUGEES AND DISPLACED IN THE JORDAN-ISRAEL PEACE TREATY

The Refugees

In the Common Agenda with Israel (signed 14 September 1993), Jordan inserted a clause relating to bilateral negotiations concerning the refugee residents in Jordan and a similar clause within the framework of the multilateral negotiations to safeguard the rights of refugees and displaced pending the solution to their problem.

However, the Declaration of Principles in Oslo and Cairo Agreement (May 1994) relegated the negotiations concerning the refugees to the final status phase of the negotiations.

Despite the vagueness regarding the rights of the refugees and displaced in the Palestinian -Israeli track, Jordan insisted in its agreement with Israel on the attainment of a just solution to the bilateral aspects of the problem in accordance with International Law. The bilateral track will thus be pursued in parallel at the same time as the final status negotiations.

The Displaced

In order to implement Security Council Resolution 237, concerning the displaced persons, the Camp David Accord envisaged the resolution of the issue within a quadripartite committee

comprising Jordan, Egypt, Israel and the Palestinians. The Oslo Agreement reaffirmed this mechanism. Jordan went along with this approach and was incorporated in Article 8 of the Jordan-Israel Peace Treaty.

Jordan will work towards reviving and revitalizing this committee and will provide its support for the Palestinians within the committee with the aim of safeguarding the rights of the displaced in order to ensure the implementation of the free exercise of the choice between staying on in Jordan or their return.

RECOMMENDATIONS

Accounting for what the Palestinians have had to undergo because of the creation of Israel in Palestine and the price Palestinians have paid and still paying in the struggle to preserve an identity on Palestinian land, the world community who supported the creation of Israel must realize the fact that the Palestinians have the right of coexistence with the Israelis according to the very first UN Resolution 181. Israel should not expect to retain all currently held land and expect peace at the same time without establishing a Palestinian state side by side with Israel. Israel and the world community must not forget that the Palestinians have been victims and their rights have been stated many times in UN resolutions. So in order to have a viable, just and lasting peace I recommend the following:

1. Israel has to withdraw from all the territories which has occupied during 1967 war to include east Jerusalem.
2. The refugees issue has to be addressed in the final status of negotiations and be solved according to international law and subsequent UN resolutions.
3. Palestinian refugees have to be granted the right of return and / or compensation in order to have a permanent solution to their problem; otherwise there will be no lasting peace. The question of where to return should be negotiable in the final status negotiations. The majority of refugees should return to a Palestinian state while others in a greed numbers should return to Israel to solve some of the humanitarian issues (to unite some of the families on both sides), and those who wish not to return should be granted the right of compensation.
4. The question of compensations should be an integral part of the solution of the refugee problem not only for the refugees but also to the countries hosting them.

CONCLUSIONS

Although many official and unofficial meetings between Palestinians and Israelis have been concluded, there is no consensus on how to finalize a permanent solution regarding refugees. The reason is that the two parties have diametrically opposed "narratives" about what

happened in 1948. In other words, the basic difference is that the Palestinians insist on the right of return of the Palestinian refugees in accordance with Resolution 194 whereas the Israelis rejects this out right and insist on the resettling of refugees in hosting countries.

UN General Assembly Resolution 194 recognizes repatriation and/or compensation as permanent solutions to the Palestinian refugees' problem. Therefore compensations are considered as an integral element of, but not a substitute for, the right of return.

In addition to other matters, United Nations Security Council Resolution 242 of 1967 calls for achieving a just settlement of the refugees' problem but at the same time does not give any specific solutions or mention Resolution 194. However and as long as Resolution 194 is issued by the same body (the United Nations). Inherently, any just solution would implicitly take into account Resolution 194.

Jordan attaches great importance to the issue of host country's compensation since it hosts the largest number of refugees. Moreover, any solution not acceptable to refugees; the majority of whom live in Jordan will be a cause of instability and friction in the future.

The differences between the Arabs and Israelis on the issue of refugees remain a road block. Both parties presented positions and outlined the legality of UN Resolution 194, and despite the fact that the solutions and numbers proposed have been suggested time after time and as long as resolution 194 and the problem have existed; the situation of refugees remains in the same corner it was 53 years ago. The problem is legal, and political, but the consequences retain a significant human dimension.

For Jerusalem, the solution has to be above the contention of national politics; it should be the spiritual capital of the Abrahamic faiths. The status of the holy city could only be meaningful if it is the twin political capital of Palestinians and Jews and the spiritual focus of the followers of all the Abrahamic religions.

POST SCRIPT

In light of the ongoing conflict in the Middle East, the first step to a long term solution is for both the Israelis and Palestinians to step back from the cycle of bombing and retaliation and come to the negotiation table in good faith to somehow re-start the peace process. Both sides share responsibility and the leadership of each must begin what appears to be an almost impossible task to unite both Arab and Jew to look to the future, and not continue the anger of past wrong doing that results in only violence. Only when all in the region are permitted to work to improving life on this earth, will the promises of the next life seem not so inviting. Leaders

must come forward and lead their people to a peaceful, economically beneficial, and spiritual solution for all.

WORD COUNT = 7631

ENDNOTES

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² Marshal J. Breger & Thomas A. Idinopoulos, Jerusalem's Holy Places & the Peace Process, (Washington: The Washington Institute for Near East Policy, 1998), 11.

³ Ibid, page17.

⁴ <http://www.us-israel.org/jsource/UN/unga2253.html>

⁵ <http://www.us-israel.org/jsource/UN/unga2254.html>

⁶ <http://www.google.com/search?hl=en&q=Resolution+242&btnG=Google+Search>

⁷ <http://www.google.com/search?hl=en&q=Resolution+252&btnG=Google+Search>

⁸ (1895-1948), Folke Bernadotte was born in Stockholm, Sweden, on January 2, 1895. A descendent of the Napoleonic marshal Jean Bernadotte. Crown prince of Sweden, and in 1818 succeeded to the throne as Charles XIV, On May 20, 1948, the five big powers of the United Nations Security Council agreed in the choice of Count Bernadotte as mediator to seek peace in the Arab-Jewish conflict in Palestine. On September 17, Count Bernadotte and Colonel Andre P. Serot of the French air force were assassinated in Jerusalem by members of the Stern group, an organization of extreme Zionists who had committed numerous atrocities over a period of years against the British and Arabs.

⁹ <http://www.mfa.gov.il/mfa/go.asp?MFAH0cfu0>

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¹¹ <http://www.yale.edu/lawweb/avalon/mideast/mid007.htm>

¹² Terry Rempel, the United Nations Conciliation Commission for Palestine and a Durable Solution for Palestinian Refugees, p. 14.

¹³ <http://www.us-israel.org/jsource/UN/unga273.html>

¹⁴ World Wide Refugee Information – Country Report: Jordan, www.refugees.org.

¹⁵ Lionel Brisson, The Role of UNRWA in Providing Education, Health and Relief and Social Services to the Palestinian Refugees, p 3-4

¹⁶ Ibid, p. 4.

¹⁷ Hussein Hassouna, A Paper Presented in Plenary II "The United Nations and Palestine Refugees" The Rights of Palestine Refugees in International Law, p. 3.

¹⁸ <http://www.sis.gov.eg/jerusalem/html/jer-un2.htm>

¹⁹ <http://www.un.org/unrwa/refugees/p1.htm>

²⁰ <http://www.un.org/unrwa/pr/index.html>

²¹ <http://www.un.org/Overview/rights.html>

²² <http://www.unhcr.ch/cgi-bin/texis/vtx/home>

²³ Salman Abu-Sitta, The Return of the Refugees is the Realistic Solution, p. 2.

²⁴ Hussein Hassouna, Ibid, p. 5.

²⁵ Salman Abu-Sitta, Ibid, p 2-3.

²⁶ Susan Akram, Reinterpreting Palestinian Refugee Rights under International Law and a Framework for Durable Solutions, p. 7.

²⁷ Ibid, p. 3.

²⁸ Ibid.

²⁹ Ibid, p. 4.

³⁰ Ibid, p. 4.

³¹ Ibid, p. 5.

³² Ibid, p. 5-6.

³³ Ibid, p. 6.

³⁴ Salman Abu-Sitta, Ibid, p. 5 & 7.

³⁵ Don Peretz, Problems of Refugee Compensations, p. 1.

³⁶ Yossi Katz, a paper presented in plenary II, the United Nations and Palestine refugees, p. 2.

³⁷ The Financial Times, The Final Status Talks Palestinian's Right of Return Turns on Israel Moral Responsibility, October 12, 1999.

³⁸ Don Peretz, Ibid, p. 2.

³⁹ Uri Avnery, Peace and the Refugees (A Nonconformist Israeli Perspective), p. 6-7

⁴⁰ Don Peretz, Ibid, p. 3.

⁴¹ Ibid, p. 3-4.

⁴² Ibid, p. 9.

⁴³ Ibid, p. 9.

⁴⁴ Ibid, p. 10.

⁴⁵ Ibid, p. 10-11.

⁴⁶ Ibid, p. 11.

⁴⁷ Public Information Office, UNRWA Headquarters (Gaza), February 2000.

⁴⁸ World Wide Refugee Information-Country Report: Jordan, www.refugees.org

⁴⁹ The Jordan-Israel Peace Treaty, what is it? p.13.

⁵⁰ Jordanian Israel Peace Treat of 1994.

⁵¹ Ibid.

⁵² Ibid.

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